

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

April 20, 2005

8:39 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 74

"An Act making findings relating to marijuana use and possession; relating to marijuana and misconduct involving a controlled substance; and providing an effective date."

HEARD AND HELD

SENATE BILL NO. 125

"An Act relating to the licensing, regulation, enforcement, and appeal rights of ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices or agencies providing hospice services, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, and rural health clinics; relating to criminal history requirements, and a registry, regarding certain licenses, certifications, approvals, and authorizations by the Department of Health and Social Services; making conforming amendments; and providing for an effective date."

HEARD AND HELD

HOUSE BILL NO. 136

"An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal

to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program."

SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 74

SHORT TITLE: CRIMES INVOLVING MARIJUANA/OTHER DRUGS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/21/05	(S)	READ THE FIRST TIME - REFERRALS
01/21/05	(S)	HES, JUD, FIN
03/21/05	(S)	HES AT 1:30 PM BUTROVICH 205
03/21/05	(S)	Heard & Held
03/21/05	(S)	MINUTE(HES)
03/23/05	(S)	HES AT 1:30 PM BUTROVICH 205
03/23/05	(S)	Heard & Held
03/23/05	(S)	MINUTE(HES)
04/01/05	(S)	HES AT 1:30 PM BUTROVICH 205
04/01/05	(S)	Moved SB 74 Out of Committee
04/01/05	(S)	MINUTE(HES)
04/04/05	(S)	HES RPT 2DP 1DNP 1NR
04/04/05	(S)	DP: DYSON, WILKEN
04/04/05	(S)	DNP: ELTON
04/04/05	(S)	NR: OLSON
04/11/05	(S)	JUD AT 8:00 AM BUTROVICH 205
04/11/05	(S)	Heard & Held
04/11/05	(S)	MINUTE(JUD)
04/19/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/19/05	(S)	Scheduled But Not Heard

BILL: SB 125

SHORT TITLE: LICENSING MEDICAL OR CARE FACILITIES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

03/02/05	(S)	READ THE FIRST TIME - REFERRALS
03/02/05	(S)	HES, JUD, FIN
03/14/05	(S)	HES AT 1:30 PM BUTROVICH 205
03/14/05	(S)	Heard & Held
03/14/05	(S)	MINUTE(HES)
04/06/05	(S)	HES AT 1:30 PM BUTROVICH 205
04/06/05	(S)	Heard & Held
04/06/05	(S)	MINUTE(HES)
04/13/05	(S)	HES AT 2:00 PM BUTROVICH 205

04/13/05 (S) Moved CSSB 125(HES) Out of Committee  
04/13/05 (S) MINUTE(HES)  
04/14/05 (S) HES RPT CS 3DP 2NR NEW TITLE  
04/14/05 (S) DP: DYSON, WILKEN, GREEN  
04/14/05 (S) NR: ELTON, OLSON  
04/20/05 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

Mr. Dean Guaneli  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Testified in support of SB 74

Mr. Bill Parker, Spokesman  
Alaskans for Marijuana Regulation and Control  
PO Box 242191  
Anchorage, AK 99524

**POSITION STATEMENT:** Testified in opposition of SB 74

Ms. Debbie Soule  
Wasilla, AK

**POSITION STATEMENT:** Testified in opposition to SB 74

Mr. Michael MacLeod-Ball, Executive Director  
Alaska Civil Liberties Union, (AkCLU)  
Juneau, AK

**POSITION STATEMENT:** Testified in opposition of SB 74

Dr. Richard Mandsager, Director  
Department of Public Health  
Department of Health & Social Services  
PO Box 110601  
Juneau, AK 99801-0601

**POSITION STATEMENT:** Introduced SB 125

Ms. Stacy Kraly, Senior Assistant Attorney General  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Commented on SB 125

**ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 8:39:56 AM. Present were Senators Hollis French, Charlie Huggins, and Chair Ralph Seekins.

CHAIR SEEKINS explained to the committee members and the public audience the agenda for the day. He announced SB 74 to be up for consideration.

**SB 74-CRIMES INVOLVING MARIJUANA/OTHER DRUGS**

The following is a near-verbatim transcript of SB 74 heard on April 20, 2005 in the Senate Judiciary Standing Committee.

8:41:18 AM

MR. DEAN GUANELI, chief assistant attorney general, Department of Law (DOL), testified in support of SB 74:

SB 74 has had hearings in Senate Health and Social Services Committee (SHES) and in the House Judiciary Committee (SJUD). Much of the testimony has been similar in the three committees from both proponents and opponents of SB 74, and a lot of the same materials have been submitted to all three committees. At this point in time I'm ready to respond to any questions regarding previous testimony and to discuss any details of SB 74. I do have some revised findings that the committee may wish to consider in SB 74. The findings as originally drafted were drafted many months ago without the input of the testimony and evidence that has been presented at the hearings and some of the wording that was used provoked some comments that were not intended by our office. These revised findings will lay to rest some of the concerns and provide a better record for the court to consider what the judgment the Legislature made of some of the evidence that has been presented both pro and con.

I think in this case it is important to include findings for clarification to the court as to the intent of the Legislature. The court is going to give deference to what the Legislature did and if all the court has before it is a mound of evidence it would have to sort through it all and come to some conclusion regarding what it believes the Legislature found. With specific findings I think the Legislature aids the court in focusing on what the Legislature found was most important about the evidence. Essentially what the findings do is focus on the increased potency of marijuana, the increasing use among young people and Alaska Natives, which I think is a concern for everybody, and testimony by the division of behavioral health about the relationship between marijuana use and alcohol addiction and how difficult it is to treat alcoholism when you

have marijuana so freely in the state. So I think those are the kinds of things we have focused on in the findings along with some other evidence.

8:44:40 AM

MR. GUANELI:

That is a brief background of where the DOL is on SB 74.

CHAIR SEEKINS:

In this case I think it is important to attach some findings to accentuate those things we think are most important about the reason we are passing SB 74 and our intent.

8:46:01 AM

BILL PARKER, spokesman, Alaskans for Marijuana Regulation and Control presented his list of witnesses.

8:46:28 AM

DEBBIE SOULE testified in opposition of SB 74:

I am married with three grown children and I own my own business. I am a constructive and active woman. Seven years ago my husband and I had a near fatal car accident. I broke everything from my neck down and then I lost my right leg. I am now in a wheelchair twice a day. The doctors had me on nine different medications, none of which worked. I was slowly being killed by all the medication they gave me. All of this after they insisted on keeping me alive.

Now I have a life of tremendous pain and tremendous loss. I heard from a doctor I might get some relief from some of the phantom pain and seizure by using marijuana. I was skeptical and thought about it for over two years before I tried it. To my great surprise I found it worked better than any medication the doctors prescribed. I also found it didn't leave me doped up and unable to function like all of the other medications they had prescribed. Some of the side effects of medications they prescribed are unbelievable. They are suicide, kidney failure, liver problems, stomach and bowel problems, and psychological issues.

The problem I have found is that although Alaska supposedly has a medical marijuana law, the State of Alaska has made it impossible to find doctors who will sign the paperwork. When I was ready to try marijuana to relieve my pain, I had to buy it illegally. I felt like a criminal. Alaska's medical marijuana law simply does not work. Even if I could find a doctor to sign

my forms, what good does it do if there is no legal way to get it?

The law allows a person to grow up to six plants, but it is not practical to most patients. Unless you fix the medical marijuana law in Alaska, patients will have to buy it illegally. That's why keeping the protection, under the Ravin decision, is so important. If SB 74 passes, the situation for people who use medical marijuana will go from bad to worse. At least now if I get arrested, I would have some protection in the eyes of the court. I understand we want to keep marijuana out of hands of children, everybody does. You have to admit when marijuana possession was made illegal in 1990, teenagers went on smoking it anyway because they can get it easier than I can. SB 74 won't make it any tougher for teenagers but it will make it tougher for people in wheelchairs to get the one medication that helps the most.

I find it odd that our good Senators and Representatives don't have anything better to do with their time than outlaw my medication. The doctors are willing to give me any medication; morphine, Valium, Oxycontin, to help keep me comfortable, who will turn me into a drug addict and kill me, but they won't sign for medical marijuana. I feel I will now live longer and be healthier and in a loss less pain because I have chosen to smoke marijuana.

[8:52:12 AM](#)

SENATOR CHARLIE HUGGINS:

THC is the effect that you're looking for. Someone told me that was available to take orally. Is that true?

MS. SOULE:

That's true, but it doesn't work the same. I've tried it. This is the only thing that has helped the seizures in my leg, and the pain. Sometimes it is so bad that I can't put my prosthesis on and walk. This marijuana is the only thing that has stopped that. To this day, I'm still astounded because I never believed it would help me. The doctors told me they were just going to keep me comfortable until I die.

SENATOR HUGGINS:

Assuming we can get a pharmaceutical company to produce THC that would provide you relief, would you think that a good alternative?

MS. SOULE:

I wish they would do that. I would support it. There are so many patients like me that need help but have to get it illegally. I met a man from Tok who is 72 years old, who owns a large company and he's doing the same thing I'm doing because we cannot find doctors. You can call the state and they will tell you there are 250 people on the medical marijuana lists but they will not give you the name of a doctor.

[8:55:08 AM](#)

MICHAEL MACLEOD-BALL, Executive director, ACLU:

We believe it is near impossible for the Judiciary Committee to reach full understanding of the issues involved with the abbreviated hearings that you've had. We object for the record in that sense. You've acknowledged you have received many studies and reports. It's a lot of information that has been submitted to you and we believe it is next to impossible to reach a full understanding of the meaning of all of that material with just a series of six or seven three-minute presentations by people who oppose SB 74. We believe the weight of the evidence, if fully understood by the committee would clearly show the justifications for SB 74 are not accurate.

[8:56:49 AM](#)

MR. MACLEOD-BALL:

The focus is on privacy rights guaranteed under the Alaska Constitution. The first issue to consider is what the privacy rights do. Is there a basis of taking away a portion of that right? A lot of the testimony that you have heard by the proponents deals with commercial cultivation, selling and distributing, providing it to kids, driving while under the influence. Almost all of the testimony deals with one or more of these issues. None of those are within the privacy rights. There is no restriction on your ability to regulate in that area. The possession of small amounts for personal use in the home for use in a way that does not adversely impact others, that is within the privacy right. Testimonies by proponents of SB 74 have acknowledged that this is not the problem. If someone has a single marijuana cigarette in their home, they would now be subjected to imprisonment up to 10 years. If someone has a single marijuana seed in an ashtray in their home, they would now be subjected to imprisonment up to 90 days. There is a regiment of punishment in this bill that has not been shown to work.

[8:59:01 AM](#)

MR. MACLEOD-BALL:

The Ravin decision in the 1970s was more about privacy than marijuana. It acknowledged in that decision that there is some risk to the use of marijuana but specifically said that risk does not justify regulation of small amounts for use in the home. It also acknowledged in that decision that kids might be present in the home in which marijuana is also present. It said that even so that was an insufficient threat to public safety to justify regulation. So we would ask you to consider the reasoning of the Ravin decision rather than simply look on the Ravin decision as one that legalized marijuana. We believe it is very important that the findings should match the facts. I'm please to see that Mr. Guaneli has offered revised findings. I would have liked to have had the opportunity to look at those ahead of time so that I could comment on those and to see if they are any better than the existing findings, which have been acknowledged as an overstatement of the asserted justifications for the bill. I would hope the committee might give us the opportunity to review the findings and comment on them.

I would like to point out a number of the overstatements that have been made by the proponents of the bill because the findings are based on the underlying studies and facts that have been presented to you. It's important for you to realize that the oral comments and some of the written comments are misleading. Some of the scientific experts have already testified against this bill. There were assertions about usage by children. The state has referred to a 1990 study to claim that 22 percent of kids of marijuana users use marijuana themselves, yet only 5 percent of kids of non-users use marijuana. There are problems with that assertion. First, only 4 pages of the study were submitted to the committee for review. The study was much longer and had much more detail than the four pages that were submitted. If you look at the full study, you will see that the study itself says you cannot draw general conclusions from the statistics reported because the sample size was too small. The state didn't tell you that. There are also methodology and reporting problems. Kids of non-users are less likely than kids of users to acknowledge that they themselves have used. That throws off the figures by quite a bit.

[9:01:44 AM](#)

MR. MACLEOD-BALL:

Usage rates reported in that study confirm there has been no increase in usage rates since the Ravin decision. Also the testimony ignored the actual recommendations of that report. The recommendations generally in that report were to focus on prevention and treatment, not on criminalization. It's important

for this committee to realize that simply listening to the oral testimony does not give you a full flavor of what the actual studies that have been submitted to this group represent. There is another important assertion that was made by the proponents of the bill. They stated that 15 percent of rape suspects had marijuana in their system. If you look at the study from which that fact was drawn, you will see that study focused more on the presence of alcohol in the system of rape suspects than the presence of marijuana. That same study showed that 70 percent of those rape suspects had alcohol in their systems. They deemed that 15 percent of suspects who had marijuana had such a trivial amount that they did not study it further. They did not drill down to get more information. However with the alcohol, they drilled down to try to determine what was driving that.

The study itself implied that the use of marijuana and aggression was not one to be studied further; rather the focus should be on the presence of alcohol. It's important for the committee to come to a full understanding of what all these studies that have been submitted to you show. We are also concerned that there may be a predisposition on this bill that has been reflected in some of the previous hearings. For example in the Senate Health and Social Services Committee hearing, there was a single administration official who spoke against the bill and she was chastised for doing so. However there have been a number of administration officials who have spoken in favor of the bill yet they have been praised for doing so. It seems to me there is a chilling effect on the proponents of the bill who may be within the administration. And for these reasons, we believe that even if the findings are left in the bill in their original form the court will choose to go beyond those findings to see what the actual studies and reports say.

[9:04:31 AM](#)

MR. MACLEOD-BALL:

There are a lot of cases in both the US and Alaska courts that show that when a fundamental right is involved the courts will not simple defer to the Legislature in their findings. In most legislation of course, they will. There is great deference given to the Legislature in legislative findings in looking at the purpose of a particular state action. But that is not the case when a fundamental right is involved and the privacy right is involved in this case. There is one case in particular, which is referenced in my written testimony Justice Clarence Thomas who has said that regardless of what information is relied upon by the Legislature, the Legislature cannot turn black into white and cannot turn slavery into freedom simply by saying it is so.

The great weight of the good scientific evidence here shows that marijuana has some risks but not great risks. Certainly no more so than were present in 1975 when the Ravin decision came down. The Ravin decision stands that the privacy right is paramount unless there is a compelling interest. Those factors are not present in this case.

[9:06:02 AM](#)

MR. MACLEOD-BALL:

I mentioned before about the 1990 study that the state relied on to assert that kids are more affected now. If you look at that full study it says kids who do poorly in school, kids who are emotionally distressed, kids who are abused, are more likely to abuse drugs. A program that does not address these factors will be bound to fail in trying to lessen drug abuse, yet that is the focus of this bill. This bill will not focus on those factors; it will simply criminalize minor possession. Granted the focus should be on education and on prevention and on the science. A wealth of which has been submitted to the committee for your consideration. We believe that if you really focus on all of the scientific evidence, you will not simply criminalize minor possession of small amounts in the home, rather you will alter the penalties, you will drastically modify the findings, and hopefully you will defeat this bill.

[9:07:17 AM](#)

CHAIR SEEKINS:

For the record, regardless of anyone's perception of our inability to understand the issue, we each will do the best that we can and we'll operate within the full scope of our constitutional authority.

MR. PARKER:

We have assembled what we think are the best experts in the country on the subject to respond to the findings. Now today the DOL offers all new findings, replacing the entire second section of the bill. I've done a quick contrasting comparison here but it's hard to do because they are in different forms. I certainly wish the experts would have had a chance to look at the findings the DOL proposes to you to pass it into law before they comment. Because I'm not an expert and because I've just seen it, I don't think this bill is ready to go with these findings uninvestigated at this point. We haven't gotten to the penalty section yet, which turns misdemeanors into felonies. Perhaps the best thing I can say to you now is thank you for your patience. I would like very much to spend a little time with this proposed amendment.

[9:09:02 AM](#)

CHAIR SEEKINS:

We have received a great deal of information. (Chair Seekins ran down the list of books and studies given to the committee by different entities.)

[9:11:53 AM](#)

Senator Gene Therriault joined the committee.

SENATOR HUGGINS:

Mr. Parker, one of my concerns, I as much as anybody sitting before you today, feels strongly about privacy and individual rights. I'm very sensitive to that point. One of the rules in our family is that to the extent we can when kids are hanging out with kids we try to be as protective as possible of who those kids are. Out of these households where parents are using, kids are exposed to marijuana and it comes the potential exportation of the mentality on the school grounds and my wife and I can't control because it's forced association, in the classroom. Give me your thoughts about what parents are supposed to do.

MR. PARKER:

You mean, Senator, that the courts findings...

SENATOR HUGGINS:

I'm not interested in the courts. I'm interested in the sociological dilemma of parents in the community, and what kids are seeing and experiencing and the mentality and how you answer that proposition. Because I don't know the answer but I've been asked that and I'm faced with it myself as a parent.

[9:13:48 AM](#)

MR. PARKER: I think I know what you mean, Senator, let me make sure I got the question right. You mean that the courts finding...

SENATOR HUGGINS:

I'll say it one more time; I'm not worried about the courts. I'm talking about kids that come from an environment where marijuana is used in the house and the potential exportation of use or the mentality of use going to, in this case, the school site.

MR. PARKER:

So in other words did all this produce a mentality that makes drugs in the schools more prevalent? Is that...?

SENATOR HUGGINS:

Yes, that's good enough for government work.

MR. PARKER:

No Senator it doesn't. The answer lies in the other direction. The way to keep children from drugs is to control and regulate it. If we continue to outlaw it, even against the courts constitutional findings, we will find what we have found for the last 15 years, that there is just more marijuana than before. The troopers' testimony is it is not stopping. We must take a different tack if we're trying to do something about drugs in the schools. Ratcheting up the penalties, especially on young people, making them felons, is not the solution. It is exactly wrong. It is the reason we have problems with drugs in the school today, because of our approach to prohibiting it instead of regulating it.

[9:15:25 AM](#)

SENATOR HUGGINS:

One of the things military leaders are faced with is the young men and women have a federal law they have to abide by and they come to Alaska and we immerse them in our state where we have a conflicting state law. My son will be in the military in a couple years and he will be a leader and he will have to abide by that federal law. When you are the leader of young people who are doing the country's business in Alaska that creates a tough environment. Your thoughts?

MR. PARKER:

My thoughts are that adults in Alaska make choices about alcohol and tobacco and prescription drugs, all sorts of things. Alaska adults make choices about marijuana too. The federal law, all those things must be taken into consideration by each individual but adults in Alaska enjoy that right to choose under the constitution.

[9:17:02 AM](#)

SENATOR THERRIAULT:

The issue of whether regulation would take care of the problem, we regulate tobacco products but yet tobacco products used by underage smokers is still a problem.

MR. PARKER:

It is but it's down and the children tell us it is now easier to get marijuana than tobacco because of that. One is regulated and one is not.

CHAIR SEEKINS:

Are you advocating that we logically extend this argument that anything that's illegal will cut down the use of it by making it legal and regulating it?

MR. PARKER:

I'm trying to confine my comments to marijuana and this bill.

CHAIR SEEKINS:

But wouldn't that logically extend to cocaine, heroin, and any other drug? You're saying the way to cut down the use is to make it legal and regulate it.

MR. PARKER

I don't mean to imply or infer that. I just know this; when it comes to marijuana, we have had a long 30-year experiment in this state about decriminalizing it, re-criminalizing it, now felon-izing it. And I think the answer is becoming clear we are moving in the wrong direction if we are trying to eradicate it. The people who tell us they are spending their careers trying to solve it and it is still booming, millions of dollars a year. I believe the answer is in a different direction. We regulate alcohol and tobacco, and I think we should regulate marijuana.

CHAIR SEEKINS:

Why do you think people like Mr. Guaneli want to keep it illegal?

MR. PARKER

Mr. Guaneli would be the best one to answer that, Senator.

CHAIR SEEKINS:

I'm asking you why do you think that. If you want to avoid that question, go ahead. Why do you think that?

[9:18:54 AM](#)

MR. PARKER:

Why do I think...

SENATOR FRENCH:

I know it's your question and it's your committee, but that just seems like...

CHAIR SEEKINS:

This is my committee. I want to know why is it that there is an attitude against it? I'm not saying just Mr. Guaneli, but why do

people want to keep something that is so harmless illegal? What's the reason?

MR. PARKER:

Well the assistant attorney general is a long time public servant. It's the Governor's bill. I believe he is doing his job. I assume he also believes it but I don't know that makes...

CHAIR SEEKINS

It appears to me that there are at least two universes of people. People who say, "Oh it's harmless just go ahead and regulate it" and other people are saying, "It's not harmless and it should be illegal to use it and to sell it and buy it and grow it and all the rest of the stuff that goes along with it." I'm just trying to figure out, it is because what I've gotten so far is it's a matter of enlightenment. Those people who truly understand the scientific background will come over to one side. Is that what it is? That's what I heard in the testimony.

MR. PARKER:

I don't think one side is enlightened over the other. There was a poll done during the campaign last year that says 45 percent of the Alaska population dug in on either side. They are not swayed by arguments or advertisements in either way. Other side thinks marijuana is evil and should be eradicated from the land, the other side thinks it is here to stay and we should do something about regulating it. In the middle are 10 percent of the voters. When it came to medical marijuana they voted yes - 56 percent. When they came to legal marijuana they voted no. The poll seems to be true. This testimony, these books, these papers by the experts, is meant to present our side of the argument.

[9:21:35 AM](#)

MR. PARKER:

You are in a terrible position to try and decide which side you're on and whose experts you listen to and who in your district you listen to. It is a substantial minority - 45 percent and not legalizing it is one thing, making them felons is quite another.

CHAIR SEEKINS:

It is interesting because in this very committee we have bills on methamphetamines and on marijuana. And in this very committee, if I take this logical extension, if we regulate and make methamphetamines legal, the problem will be reduced. I have a hard time making that logical extension so I have a hard time making the direct application.

MR. PARKER:

For the record, I am not advocating the legalization of methamphetamines; I'm just here to testify on SB 74. Thank you.

CHAIR SEEKINS:

Thank you very much for your patience and for answering my questions.

[9:22:56 AM](#)

CHAIR SEEKINS:

We have before us revised findings. I think we'll give the members a chance to take a look at that before we propose it as an amendment. We've completed the public testimony.

SENATOR FRENCH:

Mr. Guaneli, what is the number of arrests each year for marijuana, any charge, the number of convictions, and the number of cases disposed of at the highest charge?

MR. GUANELI:

That is track-able and I can provide you with much of that information later today. I have been collecting some of it helping the DOC prepare fiscal notes and so I have some of that information in my office.

[9:24:42 AM](#)

SENATOR FRENCH referred to a chart that Mr. Guaneli spoke of earlier.

Do you agree with the analysis that giving a marijuana cigarette to someone under 21 would be a B felony under SB 74.

MR. GUANELI:

That is correct. Distributing marijuana to anyone under 21 would be a B felony offense. Under current law you have to be under 19 for it to be a B felony offense and there has to be three years of age difference between them. This proposal seeks to amend that.

SENATOR FRENCH:

Right now the way the law is if an 18-year-old person gives a marijuana cigarette to an 18 year old, what crime is committed?

MR. GUANELI:

Delivering one marijuana cigarette at this point would be a class B misdemeanor. That's a hold over from the early 1980s period. I think that's a weakness in the current law.

SENATOR FRENCH:

Under this bill 18 year old to 18 year old would be a class B felony?

MR. GUANELI:

That's correct.

[9:26:30 AM](#)

CHAIR SEEKINS:

Mr. Guaneli, you've heard in testimony earlier, those people who work in the administration who agree with the premise of SB 74 receive accolades and those who don't receive some kind of chilling behavior or disapproval. Are you aware of anything like that?

MR. GUANELI:

I think the testimony you heard related to a hearing in Senate Health and Social Service at which Barbara Brink, director of the public defender agency, testified in opposition to the bill and Senator Wilken took some exception to her doing so in her official capacity rather than a private capacity. I think that is what the testimony relates to. I think that Senator Wilken has his reasons for expressing that view and that is the only thing I've heard in all of these proceedings.

CHAIR SEEKINS:

Have you had any pressure from farther up the chain on what your position on this bill should be?

MR. GUANELI:

I know the Governor and the attorney general support this bill and would like to see it become law. I have been involved in dealing with marijuana issues for many years. I have been involved in some of the litigation. I wrote the state's petition to the Supreme Court trying to get the Supreme Court to review the Noy Opinion, which came out from the court of appeals. I have done a lot of literature research myself. It doesn't take any pressure to get me to be on this side of the issue.

[9:28:36 AM](#)

CHAIR SEEKINS:

Would you believe that legalizing and regulating marijuana would cut back use by young people?

MR. GUANELI:

I'm not certain I know the answer to that but I think Mr. Parker's opinion that marijuana should be regulated is an interesting concession because essentially what the right to privacy argument in the Ravin decision says is, the state didn't have a sufficient interest in regulating and criminalizing marijuana. In essence what the court was saying and what all the people who talk about right to privacy and the state doesn't have a sufficient interest is, that it's none of the Legislature's business to deal with marijuana in the home. I think that the evidence that has been presented shows that it is. Parental use and parental approval of marijuana makes it more accessible to kids. I think the Legislature has a strong interest. What Mr. Parker said was, the Legislature ought to regulate it. I think if the Legislature has the power to regulate it, then I think that is a concession that there is a state interest in the Legislature to take another policy choice and that is to criminalize it and to punish it. Frankly I think that makes our point. I think there is sufficient evidence in the record that the Legislature has a strong interest in dealing with marijuana in the way it chooses. I don't see any other state in the country regulating it. Alaska is the only place where recreational use is legal.

[9:30:51 AM](#)

SENATOR THERRIAULT:

You indicated you have been tracking the number of cases that would be swept in to the Department of Corrections (DOC). I just looked at the fiscal notes and we don't have the DOC fiscal note. I'm curious to know what that is.

MR. GUANELI:

I'm aware of that and we just had a discussion in the Governor's office about getting the DOC fiscal note and that is in the works. I have a meeting with Portia Parker later today to go over the statistics and analyze that. My initial reaction from looking at the statistics is, it's not going to be a significant change.

SENATOR HUGGINS:

I previously asked Mr. Parker about the legal dilemma between the federal law and the state law. From your perspective, what does this do legally for you in your profession?

MR. GUANELI:

In other words that marijuana is illegal at the federal level. I think it's confusing to the public. They see on the one hand it is federally illegal and in fact a Schedule one controlled

substance. Frankly when I talk to people, they ask about the federal law. As a practical matter, the federal authorities don't get involved in marijuana at the ounce level. They have certain criteria and I think it was somewhere in the several pounds before they would get involved. If there is a large marijuana growing operation they will get involved but they have left it to the state. I think that is probably appropriate. We all bristle when the feds get too involved. In this case I wish they were a little more involved. I think this bill corrects that.

[9:34:32 AM](#)

SENATOR FRENCH:

I worked eight years on the slope and I was subjected to random drug testing and I wasn't subjected to any dilemma whatsoever. I knew if I used drugs, I'd lose my job so I just didn't.

SENATOR HUGGINS:

My point is that last week they lived in Florida and this week they live in Alaska and they hear that marijuana is legal here and they use marijuana with a random drug test in a zero environment, they are out of here.

[9:35:30 AM](#)

SENATOR GUESS:

As an example, can you tell me someone who uses marijuana for personal use right now in the home, if SB 74 passes and becomes law, what will change in that person's situation?

MR. GUANELI:

I have never heard it expressed by any law enforcement agency that they would do anything different in terms of marijuana investigations of personal use in the home. There are a lot of other offenses out there to be investigated without concerning the police on marijuana use in the home. On the other hand, if the police are in the home legitimately, and there is marijuana there, they certainly won't hesitate to take it and ask the district attorney to file additional charges. But the focus of their efforts has been for a long time, marijuana growing, and trying to stem the supply. The problem is the recent decisions by the court of appeals, first in the Noy case and then in the Crocker case, have limited the police ability to get search warrants to deal with marijuana growing. That is what ought to change. The marijuana growers ought to be the most concerned about SB 74. They are the ones whose lives will be disrupted because SB 74 will allow the police to get search warrants to investigate those cases.

SENATOR GUESS:

So if that changes then the price goes up.

MR. GUANELI:

That is usually what happens when supply goes down if demand is also not reduced. We are hoping that by sending a strong message out that demand will be reduced as well. I hope the price goes up.

[9:38:17 AM](#)

SENATOR GUESS:

Is that also the case with knock and talks? That law enforcement believes that there won't be any increase?

MR. GUANELI:

The police technique of knock and talk is simply knock on the door and see if the people will admit it. Often times, they do. Usually that activity is geared at getting information about marijuana growing and not simply to go after personal using. They use that to get information about where marijuana is coming from and about who actually is growing it. I don't anticipate a huge increase.

SENATOR GUESS:

If the focus is on growing and the supply side, explain to me why the bill focuses on the possession side and the one pound and the four ounces? Why that is the policy call?

MR. GUANELI

The bill definitely does draw different lines in terms of what amount of possession triggers either misdemeanor penalties or felony penalties. Currently it takes over a pound of marijuana in possession to be a felony. SB 74 would propose to reduce that to four ounces. Captain Herrington testified that four ounces is a lot of marijuana. You're talking about \$1,000-1,500 in value and something that makes perhaps in excess of 400 marijuana cigarettes. Because the THC potency decreases over time the person either has to use an awful lot to use it up or they have to sell it. If you've got a quarter pound, that is a lot of marijuana and that is something the law ought to discourage. When you discourage possession of the larger amounts, you discourage growing. To the extent you reduce that supply by increasing the penalties for possession of certain amounts allowing the troopers to go in and start investigating marijuana growing, you reduce its availability generally, and you reduce

its accessibility to kids and you reduce its accessibility to rural Alaska villages.

[9:41:49 AM](#)

SENATOR FRENCH:

Why not focus on that because it seems like you are on solid ground. Marijuana is more expensive and marijuana is more potent; the idea of lowering the four ounces. The amount you need to make a felony might be a rational call. That is just one portion of this chart and there are five others. One makes it a B felony for one 19 year old to hand a marijuana cigarette to another 19 year old. Part of it makes it a crime to have any even if you're not using it, while you're in a car. Part of it makes it a crime to possess any amount in the home. If you are aimed at drug growing and drug production, that splits the troublesome argument away and leaves us all in total agreement.

MR. GUANELI:

The specific proposal to make it a B felony for young people to give other young people small amounts of marijuana is a reflection of the new reality about marijuana. Because it's potent, it's often sold on a cigarette-by-cigarette basis, particularly in rural Alaska. Because it is so expensive on a per-ounce basis, kids can only afford one or two cigarettes at a time so you have a situation where that has become the normal vehicle for selling, is a cigarette at a time. I think that this is trying to get at that new reflection of reality. We've got smaller and smaller amounts being the normal vehicle for marijuana being sold and second we've got it going to kids. That was a reflection of that. Is that the most important part of this bill? No. But we tried to reflect the current reality of the way marijuana is being used and the patterns of usage and tried to deal with that.

[9:44:25 AM](#)

SENATOR FRENCH:

I know this bill is leaving committee fairly soon. I would appreciate having the opportunity to review the findings and prepare an amendment. That is my request.

CHAIR SEEKINS:

I'm trying to figure out what motivates everybody. What do you think motivates the side that does not want this to pass?

MR. GUANELI:

I think that there are probably a variety of motivations. I'd like to think the ACLU motivation is simply a matter of trying

to preserve its perception of constitutional rights regardless of the context. For other people, Debbie Soule and Jim Welch, I think that some of those people have concerns about medical marijuana. As I testified in my very first appearance here, this bill does not make any change to the medical marijuana laws. I think there is a whole other segment that simply likes to use marijuana. It's another recreational way to become high and intoxicated. I think they don't see that it goes beyond the four walls of their house, or they like to think that it doesn't and I like to think that it does.

[9:46:57 AM](#)

SENATOR GUESS:

In response to some of the testimony we have heard on medical marijuana, it might be that our current law isn't doing what we intended it to do. Have you all looked at the issue that was raised today?

MR. GUANELI:

This bill does not change medical marijuana laws in any way. Ms. Soule's testimony today was "the State of Alaska has made it impossible for doctors to prescribe marijuana", actually the law makes it very clear that doctors don't have to prescribe it, it's just a recommendation and as long as they talk to the patient about it and the pros and cons, that's enough. She also said, "I know I can grow up to six plants but it isn't practical", six plants can be a lot. The law says only three of them can be mature plants. Captain Herrington said they had a recent marijuana growing operation where they had five big plants and that was a commercial operation. So I think the Legislature has done a very good job saying they can have a rotating crop. That makes sense, and in addition, they said, it doesn't have to be the patient himself who grows those, the statute says you can have a care-giver who does the growing for you, and because there was concern at the time of what happens if the care-giver is on vacation or sick, there is a concept in the Alaska medical marijuana law for an alternate care-giver. You really have three people who can grow the marijuana. The Legislature at the time thought that was an acceptable way of allowing medical marijuana to be provided. Ever since that time, since Ravin, selling marijuana has been illegal so none of that has ever changed. My feeling is the medical marijuana law is set up in a way to make it as convenient as possible for patients to be able to grow it or find someone to grow it for them without making it so broad that it runs the risk of circumventing the law. Senator Dyson's comments of taking that up in a separate bill, maybe that is the right approach.

[9:50:10 AM](#)

SENATOR GUESS:

She was incorrect that she needs a prescription to not be arrested?

MR. GUANELI:

That's correct. A prescription is not required. That was specifically put in the law because there was concern at the time the federal government was talking about if doctors actually prescribed illegal marijuana that they might take some action against their licenses.

CHAIR SEEKINS:

Other questions? We will have time for members to take a look at the proposed findings and other information. We will give adequate notice to all the parties. SB 74 will be carried over for a future date.

Chair Seekins announced a brief recess at [9:51:07 AM](#).

Chair Seekins reconvened the meeting at [10:02:25 AM](#).

**SB 125-LICENSING MEDICAL OR CARE FACILITIES**

[10:02:44 AM](#)

CHAIR SEEKINS announced SB 125 to be up for consideration.

DR. RICHARD MANDSAGER, director, Division of Public Health, introduced SB 125.

CHAIR SEEKINS advised the committee they were working off of Version \F.

DR. MANDSAGER informed the committee he would use a slide presentation to introduce SB 125.

The slide presentation, "Protecting and Promoting the Health of all Alaskans", can be found in the bill packet.

[10:04:05 AM](#)

DR. MANDSAGER announced he is please to introduce SB 125 on behalf of the Governor. The bill does two things; one is implementation and standardization of the licensing and certification functions in the Department of Health and Social Services (DHSS), and it is also a background review of employees working in the programs who serve vulnerable populations.

The present statutory and regulatory environment has developed over time with different sets of statutes and different sets of regulations. There are great differences in how different provider types are evaluated in terms of their employees, and as institutions, different background checks.

[10:06:23 AM](#)

CMS, the national organization for Medicare is pushing a move nationally to deal with the issue of background checks and to try and improve the knowledge about employees working in fields in terms of long-term care. Alaska was awarded a pilot program grant in December of 2004 to determine whether DHSS could reduce the amount of fraud and neglect.

Slide 4

Currently 19 programs are administered under at least 12 different statutory schemes for licensure by DHSS.

[10:10:19 AM](#)

Slide 5

The three units that have been consolidated represent Phase I of the consolidation process.

SENATOR FRENCH asked Dr. Mandsager to explain the green pentagon.

DR. MANDSAGER advised it represented certification and licensing, which is a new unit created this year.

Slide 6

Centralized Licensing and Related Administrative Procedures

Slide 7

How CSSB 125 impacts the existing statutory definition of current DHSS licensing programs.

Slide 8

What's in CSSB 125?

Addition of a new chapter to centralize licensing and administration of covered entities

Addition of a new article to centralize background checks and registry functions

Updates to existing statutes

Establishes the timeline for implementation

[10:12:38 AM](#)

Slide 9

The key provisions of CSSB 125

Slide 10

Excerpt from current regulatory crosswalk

This concluded the slide presentation.

[10:16:25 AM](#)

SENATOR GUESS asked a question regarding childcare regulations. She explained she had two constituents who lost their childcare license, one because of check fraud and one for being arrested for assault while being potentially sexually assaulted. Both situations ended up in the new regulations under the variance section. She asked whether the variance licensing would be continuing or changing.

MS. STACY KRALY, senior assistant attorney general, Department of Law (DOL) answered the majority of the new licensing scheme could be very easily characterized as a cut and paste. The DOL kept the licensure provisions that are still consistent.

[10:19:08 AM](#)

DR. MANDSAGER added the language is useful from both perspectives. Variances should be able to be issued. He offered to explain his proposed two amendments, most of which had to do with renumbering.

[10:20:37 AM](#)

DR. MANDSAGER commented there were many different kinds of volunteers and DHSS needs to foster them. Volunteers would be defined in regulation and would be subject to background checks.

[10:24:12 AM](#)

DR. MANDSAGER explained immunity protection is offered to those who report abuse.

[10:25:20 AM](#)

MS. KRALY explained an individual would be notified when placed on the registry so that they could challenge their placement if need be.

[10:27:24 AM](#)

SENATOR THERRIAULT moved Amendment 1.

**Amendment to CSSB 125 (HES) in SJUD**

Page 8, following line 19:

Insert a new bill section to read:

**\*Sec. 16.** AS 44.62.330(a) is amended by adding a new paragraph to read:

(45) Department of Health and Social Services as to the licensing centralized registry under AS 47.05.330 - 47.05.390;"

Renumber the following bill sections accordingly.

Page 14, line 21, following "employee":

Insert "or volunteer"

Page 14, line 22, following "(1)":

Insert "decisions,"

Following "applicant":

Insert ","

Delete "or"

Page 14, line 23:

Delete "the"

Following "employee":

Insert ", or volunteer"

Page 14, line 24, following "jurisdiction":

Insert "or medical assistance fraud under AS 47.05.210 or a substantially similar provision in another jurisdiction"

Page 15, line 2:

Delete "and"

Following "employees":

Insert ", and volunteers"

Page 15, following line 2:

Insert new subsections to read:

"(d) An entity, individual service provider, or employee or volunteer of an entity or individual service provider shall report to the department if a court issues a decision, order, judgment, or adjudication that the entity, individual service provider, or the employee or volunteer committed medical assistance fraud or abuse, neglect, or exploitation of a child or a vulnerable adult. An entity, individual service provider, or employee or volunteer of an entity or individual service provider shall make a report under this subsection within 24 hours of receiving a decision, order, judgment, or adjudication of medical assistance fraud or abuse, neglect, or exploitation of a child or vulnerable adult.

(e) An entity or individual service provider shall report to the department any allegation that an employee, volunteer, or former employee or volunteer has committed, not more than 10 years ago, medical assistance fraud or abuse, neglect, or exploitation of a child or vulnerable adult receiving services from the entity or individual service provider. An entity or individual service provider shall make a report under this

subsection within 24 hours of receiving notice of the allegation."

Page 15, line 3:

Delete "(d)"

Insert "(f)"

Page 15, line 5:

Delete "(e)"

Insert "(g)"

Page 15, lines 10 - 11:

Delete all material.

Insert "(h) Information contained on the registry is confidential and not subject to public inspection and copying under AS 40.25.110 - 40.25.125. However, in accordance with this section and regulations adopted under AS 47.05.380, information contained on the registry may be released to authorized entities, individual service providers, and governmental agencies."

Page 15, lines 9 - 11:

Delete all material.

Insert "(i) A person who makes a report of medical assistance fraud, abuse, neglect, or exploitation or submits information to the registry, or an entity or individual service provider that fails to hire or retain an employee because the employee is included on the registry, is presumed to be acting

in good faith and shall be immune from civil liability and criminal liability."

Page 15, line 15:

Delete "(h)"

Insert "(j)"

Page 15, line 29, following "AS 47.32.010(b)"

Insert "and an owner, officer, director, member, and partner of the entity"

Page 36, line 26:

Delete "34"

Insert "35"

Page 40, line 13:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 40, line 15:

Delete "34"

Insert "35"

Page 40, line 16:

Delete "34"

Insert "35"

Page 40, line 18:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 40, line 19:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 40, line 21:

Delete "34"

Insert "35"

Page 40, line 24:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 40, line 27:

Delete "19"

Insert "20"

Page 40, line 28:

Delete "19"

Insert "20"

Page 40, line 30:

Delete "19"

Insert "20"

Page 41, line 2:

Delete "19"

Insert "20"

Page 41, line 3:

Delete "34"

Insert "35"

Page 41, line 6:

Delete "19"

Insert "20"

Page 41, line 8:

Delete "19"

Insert "20"

Page 41, line 11:

Delete "19"

Insert "20"

Page 41, line 14:

Delete "19"

Insert "20"

Delete "34"

Insert "35"

Page 41, line 15:

Delete "19"

Insert "20"

Page 41, line 17:

Delete "19"

Insert "20"

Page 41, line 21:

Delete "34"

Insert "35"

Page 41, line 22:

Delete "34"

Insert "35"

Page 41, line 23:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 41, line 31:

Delete "17"

Insert "18"

Page 42, line 1:

Delete "18"

Insert "19"

Page 42, line 2:

Delete "20"

Insert "21"

Page 42, line 3:

Delete "21"

Insert "22"

Page 42, line 4:

Delete "22"

Insert "23"

Page 42, line 5:

Delete "23"

Insert "24"

Delete "24"

Insert "25"

Page 42, line 6:

Delete "26"

Insert "27"

Page 42, line 7:

Delete "27"

Insert "28"

Page 42, line 8:

Delete "28"

Insert "29"

Page 42, line 9:

Delete "29"

Insert "30"

Page 42, line 10:

Delete "30"

Insert "31"

Page 42, line 11:

Delete "31"

Insert "32"

Page 42, line 12:

Delete "32"

Insert "33"

Page 42, line 13:

Delete "33"

Insert "34"

Page 42, line 14:

Delete "37"

Insert "38"

Page 42, line 15:

Delete "40"

Insert "41"

Page 42, line 20:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 42, line 26:

Delete "34"

Insert "35"

Page 42, line 29:

Delete "34"

Insert "35"

Page 43, line 8:

Delete "34"

Insert "35"

Page 43, line 9:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 43, line 11:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 43, lines 13 - 14:

Delete "secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "secs. 1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 43, line 19:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 43, line 22:

Delete "1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 - 51"

Page 43, line 24:

Delete "34"

Insert "35"

Page 43, line 28:

Delete "34"

Insert "35"

Page 44, line 6:

Delete "19"

Insert "20"

Page 44, line 8:

Delete "19"

Insert "20"

Page 44, line 9:

Delete "19"

Insert "20"

Page 44, line 10:

Delete "19"

Insert "20"

Page 44, line 12:

Delete "19"

Insert "20"

Page 44, line 15:

Delete "19"

Insert "20"

Page 44, line 17:

Delete "19"

Insert "20"

Page 44, lines 24 - 25:

Delete "secs. 1 - 18, 20 - 34, 36 - 41, and 43 - 50"

Insert "secs. 1 - 15, 17 - 19, 21 - 35, 37 - 42, and 44 -  
51"

Page 44, line 28:

Delete "19 and 35"

Insert "16, 20, and 36"

Page 45, line 3:

Delete "56"

Insert "57"

Page 45, line 4:

Delete "52, 54, and 56"

Insert "53, 55, and 57"

Page 45, line 6:

Delete "41"

Insert "43"

Page 45, line 7:

Delete "19 and 35"

Insert "16, 20, and 36"

Page 45, line 8:

Delete "56(b)"

Insert "57(b)"

Page 45, line 10:

Delete "58 - 60"

Insert "59 - 61"

SENATOR GUESS objected for the purpose of discussion and asked who is tasked with making the report within 24 hrs.

MS. KRELY advised it would be a mandatory reporting requirement and either the employer of DHSS would make the report to the keeper of the registry.

SENATOR GUESS asked about an off-hours system.

MS. KRELY advised an 800 number or e-mail would be available.

CHAIR SEEKINS advised the committee he intended to have the amendments incorporated into a committee substitute (CS) and give them an opportunity to view the final document before voting on it.

SENATOR GUESS asked the penalty for late reporting.

DR. MANDSAGER advised it was defined in the regulations.

Amendment 1 was adopted.

SENATOR GUESS moved Amendment 2.

**Amendment #2 to CSSB 125 (HES) in SJUD**

Page 22, following line 27:

Insert a new subsection to read:

"(b) The department shall, within 90 days after receiving a written request that it do so, delegate its powers relating to child care facilities under this chapter to a municipality that has adopted an ordinance providing for child care licensing under home rule powers under AS 29.10.010 or as authorized under AS 29.35.200 - 29.35.210. A municipality to which these powers have been delegated may adopt, by ordinance, additional requirements for child care facilities operating within its boundaries if the requirements meet or exceed the requirements adopted by the department."

Page 22, line 28:

Delete "(b)"

Insert "(c)"

Hearing no objections, the motion carried.

[10:35:00 AM](#)

CHAIR SEEKINS advised Representative Sharon Cissna the committee adopted two amendments for incorporation into a CS. He asked that her testimony be confined to that.

REPRESENTATIVE CISSNA noted the committee had not progressed to the point in SB 125 that she was concerned about. She offered to speak at a future hearing.

10:38:56 AM

SB 125 was held in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at 10:39:45 AM.